

House Study Bill 137 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON COWNIE)

A BILL FOR

1 An Act establishing data security compliance requirements
2 in relation to payment card transactions, and providing
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 715C.2, subsection 8, Code 2013, is
2 amended by striking the subsection.

3 Sec. 2. NEW SECTION. 715C.3 **Personal information —**
4 **business duty to safeguard — remedies.**

5 1. Any person who accepts a payment card in connection
6 with transactions occurring in the ordinary course of business
7 has a duty to comply with or adhere to payment card industry
8 data security standards. A financial institution may bring an
9 action against a person who is subject to a breach of security
10 if the person is found at the time of the breach to have engaged
11 in or violated such data security standards.

12 2. In an action commenced by a financial institution
13 to recover damages pursuant to subsection 1, the financial
14 institution shall submit in writing a request that the person
15 alleged to have violated this section certify compliance with
16 the standards pursuant to a payment card industry-approved
17 independent auditor or another person authorized to issue such
18 a certification. A presumption of compliance shall exist if
19 a person contracts for or utilizes the services of a third
20 party to collect, maintain, or store personal information used
21 in connection with a payment card, and contractually requires
22 that the third party ensure compliance with the standards on
23 an ongoing basis.

24 3. *a.* A financial institution prevailing in an action for
25 failure to safeguard personal information against a breach
26 of security may recover actual damages arising from the
27 failure. Actual damages shall include any costs incurred by
28 the financial institution in relation to the following:

29 (1) Cancellation or reissuance of a payment card affected
30 by the security breach.

31 (2) Closing of a deposit, transaction, share draft, or other
32 account affected by the security breach and any action to stop
33 payment or block a transaction with respect to the account.

34 (3) Opening or reopening of a deposit, transaction, share
35 draft, or other account affected by the security breach.

1 (4) Refunding or crediting made to an account holder to
2 cover the cost of any unauthorized transaction relating to the
3 breach of security.

4 (5) Notification to account holders affected by the breach
5 of security pursuant to section 715C.2.

6 *b.* Reasonable attorney fees and costs shall be awarded to
7 the prevailing party, with the exception that an award shall
8 not be made to a person who failed to submit certification as
9 required in subsection 2.

10 *c.* An action pursuant to this section shall not be commenced
11 against any person other than a person who has been found to
12 have violated this section.

13 **Sec. 3. NEW SECTION. 715C.4 Penalties.**

14 1. A violation of this chapter is an unlawful practice
15 pursuant to section 714.16 and, in addition to the remedies
16 provided to the attorney general pursuant to section 714.16,
17 subsection 7, the attorney general may seek and obtain an
18 order that a party held to violate this chapter pay damages
19 to the attorney general on behalf of a person injured by the
20 violation.

21 2. The rights and remedies available under this chapter are
22 cumulative to each other and to any other rights and remedies
23 available under the law.

24 **EXPLANATION**

25 This bill establishes data security compliance requirements
26 in relation to payment card transactions.

27 Current provisions in Code chapter 715C prescribe consumer
28 notification requirements applicable to security breaches
29 involving consumer personal information used in the course
30 of a person's business, vocation, occupation, or volunteer
31 activities. This bill establishes requirements and remedies
32 available to a financial institution in the event a security
33 breach occurs and a person who accepts a payment card in
34 connection with transactions occurring in the ordinary course
35 of business has failed to comply with or adhere to payment card

1 industry data security standards.

2 The bill provides that a financial institution may bring
3 an action against a person who is subject to a breach of
4 security if the person is found at the time of the breach
5 to have engaged in or violated data security standards. The
6 financial institution shall be required to submit in writing a
7 request that the person alleged to have violated the standards
8 certify compliance with the standards pursuant to a payment
9 card industry-approved independent auditor or another person
10 authorized to issue such a certification. The bill states that
11 a presumption of compliance shall exist if a person contracts
12 for or utilizes the services of a third party to collect,
13 maintain, or store personal information used in connection with
14 a payment card, and contractually requires that the third party
15 ensure compliance with the standards on an ongoing basis.

16 The bill provides that a financial institution prevailing in
17 an action for failure to safeguard personal information against
18 a breach of security may recover actual damages, as specified
19 in the bill, arising from the failure.

20 The bill makes existing unlawful practice penalty provisions
21 for violations of Code section 715C.2 also applicable to data
22 security compliance violations.